

Syncon Resins – EPA’s Proposal to Resolve Liens to Promote Redevelopment

Background: EPA Region 2, NJDEP, and the Town of Kearny have been meeting monthly since November 2019 to develop a settlement methodology to resolve the liens recorded by EPA and NJDEP on the Syncon Resins Superfund Site property to secure claims for costs incurred in cleaning up the Site under CERCLA, and the tax liens recorded by the Town of Kearny.

EPA, as well as NJDEP and the Town, have a shared interest in promoting redevelopment of this Site while simultaneously resolving their respective liens in a reasonable and equitable manner. It is important to note that this is not a cost recovery action by EPA or NJDEP but rather a lien resolution process to enable the Site to be free of legal encumbrances to ensure marketable title. This will allow the Town of Kearny to foreclose on the Site property and have the property sold at auction to the highest bidder (who would also be required by NJDEP to undertake future Operation and Maintenance (“O & M”) responsibilities that NJDEP currently is required to perform). In exchange for an agreed upon percentage of the sales proceeds, EPA and NJDEP would release their respective liens on the property, and the property would be put back on the tax rolls and placed into productive reuse. The Town of Kearny would also receive a percentage of the sales proceeds and its tax liens would be extinguished at the time of foreclosure.

Current status: Prior to the December 18, 2019 meeting, the parties provided underlying cost documentation supporting their respective past costs secured by the liens. The December meeting was focused on the review of such documentation and a discussion of various legal and equitable issues. As an initial matter, in order to conduct an apples to apples analysis, EPA believes that each party’s secured past costs amount should consist of principal only. Therefore, the principal amounts secured by the respective liens are as follows:

- Town of Kearny’s Tax Liens -- Two tax sale certificates recorded by the Town in June 1995 reflect a combined principal of approximately \$4.95M.
- DEP Spill Fund Lien –NJDEP’s Spill Act lien initially recorded on September 15, 1995 and last amended in 2015, is in the amount of \$871,399.09. NJDEP also obtained default judgment liens in the amount of \$6,150,673 in 2005 against Farnow, Inc. and Syncon Resins, Inc., the bankrupt and defunct owners of the remaining lots that comprise the Site. Thus, NJDEP’s total unrecovered past costs secured by liens on the Site are approximately \$7.02M.
- EPA’s Superfund Liens – EPA recorded a CERCLA lien on Lot 12 in February 1995 in the amount of \$19,500,036 and recorded a CERCLA lien on Lots 13 and 13R in the amount of \$17,582,000 after the Trustee abandoned the Site property and closed the bankruptcy of Farnow, Inc. and Syncon Resins, Inc. EPA’s total unrecovered costs secured by liens on the Site as documented in EPA’s cost reports are approximately \$65M.

EPA's Proposal

In order to develop a settlement methodology to resolve each party's lien, the first step is to have an understanding of what each party's respective percentage is. The following calculations represent a pro rata application of past unrecovered principal amounts secured by liens as a percentage of the total. The total amount of principal secured by liens is: \$4.95M + \$7.02M + 65M = \$76.97M or approximately \$77M.

Town of Kearny: $4.95\text{M}/77\text{M} = 6.4\%$

NJDEP: $7.02\text{M}/77\text{M} = 9.1\%$

EPA: $65\text{M}/77\text{M} = 84.4\%$

The second step is to identify the factors that influence the adjustment of the straight percentages. These are discussed below:

- Town's costs of foreclosure proceeding – The Town will incur the time and expense of foreclosing on the property, while EPA and NJDEP will realize a savings from not instituting a legal proceeding to foreclose on its liens.
- Town's collection of future taxes – Once the Site is sold, the Town will receive future property tax payments, as modified by applicable tax incentives.
- NJDEP's O&M costs – NJDEP has indicated that any new owner (other than the Town) will be required to take over the O&M that NJDEP currently performs related to the groundwater remedy (Operable Unit 1). NJDEP estimates that it will expend approximately \$500,000 annually. If a prospective purchaser commits to perform the O&M, NJDEP will realize a significant savings over a period of at least 10-20 years. In addition, by making O&M a requirement of the sales purchase, a prospective purchaser would necessarily adjust his offer to address these added costs resulting in a lower purchase price and fewer proceeds available to satisfy the parties' liens.
- EPA obtains no future benefit – After the Site is sold and EPA's lien is extinguished, EPA will not receive any future benefit. EPA will continue to perform five-year reviews at the Site and incur costs that are not recoverable.
- EPA's 1997 Consent Decree -- Under the 1997 Consent Decree with Mr. Farber, EPA was entitled to receive the majority of insurance proceeds that Mr. Farber recovered. This obligation was not upheld by Mr. Farber and in the 2013 settlement with NJDEP, NJDEP recovered \$5M in insurance proceeds. In addition, under the 1997 Consent Decree, which was an ability to pay settlement, EPA is to receive all the net proceeds from the sale of the Site property.

Under the Superfund Redevelopment Initiative launched 20 years ago, and currently as EPA implements the Superfund Task Force Final Report issued in September 2019, EPA has helped

Superfund sites be safely reused and redeveloped while remaining protective of human health and the environment. In order to facilitate the resolution of the parties' respective liens, EPA has weighed the factors discussed herein, has balanced them to advance our shared goals of promoting redevelopment while upholding our respective legal responsibilities to our constituents/clients, and proposes the following settlement methodology. This proposed settlement methodology is for settlement purposes only and should not be construed as an admission by EPA of any legal and/or equitable issue raised in this proposal or in any of our discussions to date.

1. The Town of Kearny will be reimbursed in full for all of its documented foreclosure related costs;
2. The remaining net proceeds will be divided according to the following percentages:
 - Town of Kearny: 10%
 - NJDEP: 8%
 - EPA: 82%